

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

BANK OF AMERICA, N.A.,

Plaintiff,

vs.

No. CIV 14-0319 JB/KBM

LAURENCE LISA LEBRETON; MORTGAGE
ELECTRONIC REGISTRATION SYSTEM,
INC., as Nominee for America's Wholesale
Lender; and FNU LNU, Unknown Tenant (Real
Name Unknown),

Defendants.

ORDER¹

THIS MATTER comes before the Court on the Defendant's Motion to Dismiss Pursuant to NMRA 1-012(A) and Fed. R. Civ. P. 12(b)(6), filed April 25, 2014 (Doc. 4)("Motion").² The Court held a hearing on March 18, 2015. For the reasons stated at the hearing, the Court will grant the Motion and dismiss Defendant Lisa Lebreton's Counter Claim, filed May 23, 2014 (Doc. 9 at 4-10), without prejudice to Lebreton filing a motion³ for leave from the Court to

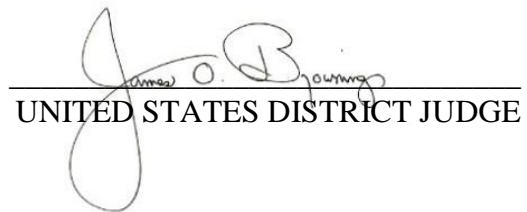
¹This Order disposes of the Defendant's Motion to Dismiss Pursuant to NMRA 1-012(A) and Fed. R. Civ. P. 12(b)(6), filed April 25, 2014 (Doc. 4). The Court may, however, at a later date issue a memorandum opinion more fully explaining the rationale for its decision.

²Although the Motion is titled "Defendant's Motion," Plaintiff Bank of America, N.A. filed it. The Motion's title is either a typographical error or a reference to the fact that Bank of America is moving to dismiss a claim against which it is defending.

³Lebreton may still be able to assert a counterclaim, but she must do so within one of the pleadings listed in rule 7(a) of the Federal Rules of Civil Procedure. If she wishes to assert a counterclaim, the proper way to go about doing so is to either: (i) if she had not yet filed an answer to the complaint, include the counterclaim in her answer when she files it; or (ii) if she has already filed an answer, file a motion under rule 15(a)(2) requesting the Court's leave to amend her answer to add a counterclaim. Lebreton should also bear in mind that, under local rule 7.1(a) of the United States District Court District of New Mexico's Local Rules of Civil Procedure, before filing any motion -- but not pleadings -- the movant must meet and confer with

amend her Answer, No. D-101-CV-2012-00267 (N.M. Dist. Ct. July 18, 2012), to reassert the counterclaim.

IT IS ORDERED that: (i) the Defendant's Motion to Dismiss Pursuant to NMRA 1-012(A) and Fed. R. Civ. P. 12(b)(6), filed April 25, 2014 (Doc. 4), is granted; and (ii) Defendant Lisa Lebreton's Counter Claim, filed May 23, 2014 (Doc. 9 at 4-10), is dismissed without prejudice.



UNITED STATES DISTRICT JUDGE

Counsel and party:

David A. Ferrance
Albuquerque, New Mexico

--and--

Rachel Chiado
Little & Dranttel, PC
Albuquerque, New Mexico

--and--

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Defendant pro se

all opposing parties to ascertain whether they oppose or consent to the motion. Finally, before filing any motion in this case, the parties must call the Court's Deputy Clerk and the Court will meet with the parties in a pre-filing conference.